



City of Albuquerque

Legislative File Number O-06-21 (version 2)

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

C/S Adopting An Assisted Outpatient Treatment Program; Defining Terms; Establishing Criteria And Referral Proceedings; Providing For Petition To District Court, Procedure, Disposition, And Noncompliance Provisions.

CITY of ALBUQUERQUE SEVENTEENTH COUNCIL

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. FINDINGS AND INTENT.

The City Council finds that there are mentally ill persons who are capable of living in the community with the help of family, friends and mental health professionals, but who, without routine care and treatment, may relapse and become violent, suicidal or require hospitalization. The City Council further finds that there are mentally-ill persons who can function well and safely in the community with supervision and treatment, but who without such assistance, will relapse and require long periods of hospitalization. The City Council further finds that some mentally ill persons, because of their illness, have great difficulty taking responsibility for their own care, and often reject the outpatient treatment offered to them on a voluntary basis. Family members and caregivers often must stand by helplessly and watch their loved ones and patients decompensate.

Effective mechanisms for accomplishing these ends include: the establishment of assisted outpatient treatment as a mode of treatment, improved coordination of care for mentally ill persons living in the community and the improved dissemination of information between and among mental health providers and general hospital emergency rooms. The City Council further finds that if such court-ordered treatment is to achieve its goals, it must be linked to a system of comprehensive care, in which state

and local authorities work together to ensure that outpatients receive case management or peer specialist services.

SECTION 2. SHORT TITLE.

This Ordinance shall be referred to as the “Assisted Outpatient Treatment Ordinance” or “this Ordinance.”

SECTION 3. DEFINITIONS.

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADVANCED DIRECTIVES. Any pre-existing instructions concerning medical treatment decisions pertaining to a person subject or potentially subject to an order of assisted outpatient treatment under this Ordinance.

ASSISTED OUTPATIENT TREATMENT. Court ordered services prescribed to treat a person's mental illness and to assist a person in living and functioning in the community or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in harm to the person or another.

ASSISTED OUTPATIENT TREATMENT PROGRAM. A program that arranges and coordinates the provision of assisted outpatient treatment, including monitoring treatment compliance by patients, evaluating and addressing the conditions or needs of assisted outpatients and ensuring compliance with court orders.

CITY. The City of Albuquerque, a New Mexico municipal corporation.

MAYOR. The Mayor of the City of Albuquerque or his or her designated representatives.

MENTAL ILLNESS. A substantial disorder of thought, mood or behavior that afflicts a person and that impairs that person's judgment but does not mean developmental disability.

PATIENT. A person receiving assisted outpatient treatment pursuant to a court order.

PROVIDER. A public or private health care facility or health care practitioner licensed to provide health care services in New Mexico.

SUBJECT. A person who is alleged in a petition to the court to meet the criteria for Assisted Outpatient Treatment.

SECTION 4. CRITERIA.

(A) A Subject may be ordered to receive Assisted Outpatient Treatment if the Court finds that such person:

- (1) Is eighteen (18) years of age or older;
- (2) Is suffering from a mental illness;
- (3) Is unlikely to survive safely in the community without supervision, based on a clinical determination;
- (4) Has a history of lack of compliance with treatment for mental illness that has:
 - (a) prior to the filing of the petition, at least twice within the last thirty-six months been a significant factor in necessitating hospitalization or receipt of services in a forensic or other mental health unit of a state correctional facility or a local jail facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition; or
 - (b) prior to the filing of the petition, resulted in one or more acts of serious violent behavior toward self or others or threats of, or attempts at, serious physical harm to self or others within the last forty-eight months, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition; and
- (5) Is unlikely, as a result of mental illness, to voluntarily participate in the recommended treatment pursuant to the treatment plan; and
- (6) In view of the person's treatment history and current behavior, is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in serious harm to himself or another person; and
- (7) Will likely benefit from assisted outpatient treatment; and
- (8) Is located within the municipal limits of the City.

(B) If the person has an advance directive or personal representative, agent, surrogate, guardian or individual designated by the person to make health care decisions, the court shall take into account any advance directives or directions by the person representative, agent, surrogate, guardian or individual designated by the person in determining the written treatment plan. Nothing in this Ordinance shall

preclude a person with an authorized representative from being subject to a petition for an order authorizing assisted outpatient treatment.

SECTION 5. REFERRAL AND INITIATION OF PROCEEDINGS.

(A) A petition for an order authorizing assisted outpatient treatment may be filed in Second Judicial District Court. A petition shall be filed only by the following persons:

- (1) a person eighteen years of age or older who resides with the subject;
- (2) the parent or spouse of the subject;
- (3) the sibling or child of the subject, provided that the sibling or child is eighteen years of age or older;
- (4) the director of a hospital where the subject is hospitalized;
- (5) the director of a public or charitable organization or agency or a home where the subject resides or that provides mental health services to the subject;
- (6) a qualified psychiatrist;
- (7) a provider or the social services official of the city or county where the subject is present or reasonably believed to be present; or
- (8) a parole officer or probation officer assigned to supervise the subject;

or

(9) the Mayor, including without limitation, the Crisis Intervention Team of the Albuquerque Police Department or the Albuquerque Family and Community Services Department.

(C) The petition shall state:

- (1) the petitioner's belief that the Subject is mentally ill and facts upon which this belief is based;
- (2) to the extent known, the name, age, present whereabouts and permanent address of the Subject and, if not known, any information the petitioner might have about the Subject and where the Subject resides;
- (3) to the extent known, the name and address of the Subject's spouse or nearest relative or relatives, or legal guardian, or if not known, any information the petitioner might have about a spouse, relative or relatives or legal guardian or agent and where they might be found;
- (4) to the extent known, whether or not this Subject is able to pay for medical

services, and if not known, any information the petitioner might have about the Subject's financial circumstances or whether the Subject is receiving publicly assisted medical care or whether the Subject is indigent;

(5) to the extent known, the name and address of the Subject's legal counsel, or if not known, any information the petitioner might have about the Subject's legal counsel;

(6) to the extent known, the name and address of any person who has custody of the Subject, and any known pending criminal charge or charges or of any arrest warrant or warrants outstanding, or if there are none, or if not known, and any information the petitioner might have about any current criminal justice system involvement with the Subject;

(7) to the extent known, the name or names and address or addresses of any witness or witnesses the petitioner believes has knowledge of facts relevant to the issue being brought before the court;

(8) if the petitioner wishes to recommend to the court that the Subject should be treated by a specific doctor or clinic, then the name and address of the doctor or clinic to which the petitioner recommends that the Subject be sent for treatment or evaluation;

(9) the petitioner shall provide information concerning whether he knows if the alleged Subject has advance directives or an agent, and shall advise the court concerning the location of the advance directives or agent, and provide a copy of pertinent documents to the court if the petitioner has access to the Subject's advance directives;

(10) each of the criteria for mandated outpatient treatment as set forth in this act; and

(11) facts that support such petitioner's belief that the Subject meets each criterion, provided that the hearing on the petition need not be limited to the stated facts.

(D) The petition shall be accompanied by an affidavit from a physician, who shall not be the petitioner, and shall state that:

(1) The physician has personally examined the subject no more than ten days prior to the filing of the petition, that the physician recommends assisted outpatient

treatment for the subject and that the physician is willing and able to testify in person or by telephone at the hearing on the petition; or

(2) No more than ten days prior to the filing of the petition, the physician or the physician's designee has made appropriate attempts to elicit the cooperation of the subject but has not been successful in persuading the subject to submit to an examination, that the physician has reason to suspect that the subject meets the criteria for assisted outpatient treatment and that the physician is willing and able to examine the subject and testify at the hearing on the petition.

SECTION 6. PROCEDURE.

(A) Notice of a proceeding under this Ordinance shall be served on the Subject of the petition, Protection and Advocacy, and the Public Defender's Office Mental Health Unit.

(B) The Subject shall be represented by counsel at all stages of the proceedings. When a subject has not retained his own attorney and is unable to do so, the court shall appoint counsel to represent him. When appointing counsel, the court shall give preference to nonprofit organizations offering representation to mentally ill and developmentally disabled persons. When a Subject is not indigent, he shall be liable for the cost of his legal representation. At the hearing, the Subject shall have the right to present evidence and to cross-examine witnesses. A complete record of the hearing shall be made, and there shall be a right to an expeditious appeal. The medical records in the district court record are subject to the rules of disclosure of information provided by the State of New Mexico Mental Health and Developmental Disabilities Code, as amended from time to time, pertaining to persons subject to involuntary commitment.

(C) At the hearing, the court shall hear all relevant testimony and may examine the Subject in open court, or, if advisable, may examine the Subject out of court. If the Subject fails to appear at the hearing and attempts to elicit attendance of the Subject have failed, the hearing may proceed in the Subject's absence. If the hearing is conducted without the Subject present, the court shall set forth the factual basis for conducting the hearing without the presence of the Subject. The court shall not order assisted outpatient treatment unless it finds that all of the criteria in Section 4(A) above have been satisfied.

(D) The court shall not order assisted outpatient treatment for the Subject unless a physician, who has personally examined the subject of the petition within ten days prior to the filing of the petition, testifies in person or by telephone at the hearing. The physician shall:

(1) State the facts that support the allegation that the subject meets each criterion for assisted outpatient treatment and that the treatment is the least restrictive alternative;

(2) State the recommended assisted outpatient treatment and the rationale for the recommended assisted outpatient treatment; and

(3) Describe, if the recommended assisted outpatient treatment includes medication, the types or classes of medication that should be authorized and the beneficial and detrimental physical and mental effects of such medication. In addition, the physician shall recommend whether such medication should be self-administered or should be administered by an authorized professional.

(E) If the subject has refused to be examined by a physician, the court may request that the Subject consent to an examination by a court appointed physician. If the Subject does not consent to an examination and the court finds that there are reasonable grounds to believe that the allegations in the petition are true, the court may order that a law enforcement officer take the Subject into custody and transport the Subject to a provider for examination by a physician. The examination may be performed by the physician whose affidavit accompanied the petition. No Subject taken into custody pursuant to this section shall be detained longer than seventy-two hours.

SECTION 7. WRITTEN LICENSED PHYSICIAN TREATMENT PLAN.

(A) The court shall not order assisted outpatient treatment unless an examining physician:

(1) Identified by the appropriate provider develops and provides to the court a proposed written treatment plan; and

(2) Testifies in person or by telephone to explain the written proposed treatment plan.

(B) In developing a treatment plan, the physician shall take into account, if existing, an advance directive and provide the following persons with an opportunity to

actively participate in the development of the plan:

- (1) The Subject;
- (2) The treating physician; and
- (3) Upon the request of the subject, an individual significant to the Subject,

including any relative, close friend or individual otherwise concerned with the welfare of the subject. If the petitioner is a provider, the plan shall be provided to the court no later than the date of the hearing on the petition.

(C) The written treatment plan shall include case management services or assertive community treatment teams to provide care coordination and all types of assisted outpatient treatment services that the physician recommends the subject should receive. If the written treatment plan includes medication, it shall state whether such medication should be self-administered or should be administered by an authorized professional and shall specify type and dosage range of medication most likely to provide maximum benefit for the subject. If the written treatment plan includes alcohol or substance abuse counseling and treatment, such plan may include a provision requiring relevant testing for either alcohol or illegal substances; provided that the physician's clinical basis for recommending such plan provides sufficient facts for the court to find that:

- (1) The Subject has a history of alcohol or substance abuse that is clinically related to the mental illness; and
- (2) Such testing is necessary to prevent a relapse or deterioration that would be likely to result in serious harm to the subject or others.

(D) An examining physician's testimony explaining the written treatment program shall:

- (1) State the recommended assisted outpatient treatment, the rationale for the recommended assisted outpatient treatment and the facts that establish that such treatment is the least restrictive alternative; and
- (2) Describe, if the recommended assisted outpatient treatment includes medication, the types or classes of medication that should be authorized and the beneficial and detrimental physical and mental effects of such medication. In addition, the physician shall recommend whether such medication should be self-administered or

should be administered by an authorized professional. If the petitioner is a provider, the testimony shall be given at the hearing on the petition. If it can be determined within a reasonable degree of medical certainty that the condition is caused in whole or in part by a brain injury, the physician shall include an assessment of the degree or extent to which the condition is attributable to brain injury.

SECTION 8. DISPOSITION.

(A) If after hearing all the relevant evidence the court finds that grounds for Assisted Outpatient Treatment have not been established, and that the Subject does not meet the criteria for Assisted Outpatient Treatment, the court shall dismiss the petition.

(B) If after hearing all the relevant evidence the court finds that grounds for Assisted Outpatient Treatment have been established by clear and convincing proof and there is no appropriate and feasible less restrictive alternative, it shall be authorized to order the Subject to receive Assisted Outpatient Treatment for a period not to exceed six months. In its order, the court shall state the Assisted Outpatient Treatment that the Subject is to receive. A court may order the Subject to self-administer psychotropic drugs or accept the administration of such drugs by an authorized professional as part of an assisted outpatient treatment program. The order may specify the type and dosage range of such psychotropic drugs and shall be effective for the duration of the Subject's assisted outpatient treatment. The court may order treatment that has not been recommended by the examining physician and included in the written treatment plan for assisted outpatient treatment. Assisted outpatient treatment may include one or more of the following categories:

- (1) medication;
- (2) periodic blood tests or urinalysis as medically necessary to determine compliance with prescribed medications;
- (3) individual or group therapy;
- (4) day or partial day programming activities;
- (5) educational and vocational training or activities;
- (6) alcohol or substance abuse treatment and counseling and periodic tests for the presence of alcohol or illegal drugs for persons with a history of alcohol or substance abuse;

(7) supervision of living arrangements; or

(8) any other services prescribed to treat the person's mental illness and to either assist the person in living and functioning in the community or to help prevent a relapse that may reasonably be predicted to result in suicide or the need for hospitalization; however, electro-convulsive therapy shall never be a form of treatment allowed by this ordinance.

(C) If after hearing all relevant evidence, the court finds that grounds for assisted outpatient treatment services have been established by clear and convincing proof and that there is no appropriate and feasible less restrictive alternative, but the court has yet to be provided with a written proposed treatment plan and testimony pursuant to this Ordinance, the court shall order the provider to provide the court with a written treatment plan and testimony as soon as practicable. Upon receiving the written treatment plan and testimony, the court may order assisted outpatient treatment as provided in this Ordinance.

(D) The determination by a court that a Subject is in need of assisted outpatient treatment shall not be construed as or deemed to be a determination that the subject is incapacitated.

(E) If the petitioner is a provider that operates an assisted outpatient treatment program, the court order shall direct the provider to provide or arrange for all assisted outpatient treatment for the patient throughout the period of the order.

(F) The provider shall apply to the court for approval before instituting a proposed material change in the assisted outpatient treatment order unless such change is contemplated in the order. An application for approval shall be served upon those persons required to be served with notice of a petition for an order authorizing assisted outpatient treatment pursuant to this section. Nonmaterial changes may be instituted by the assisted outpatient treatment program without court approval.

(G) For purposes of this section, "material change" means an addition or deletion of a category of assisted outpatient treatment from the order of the court or any deviation without the patient's consent from the terms of an existing order relating to the administration of psychotropic drugs.

SECTION 9. APPLICATIONS FOR ADDITIONAL PERIODS OF TREATMENT.

(A) If a provider determines that the condition of a patient requires further assisted outpatient treatment, the provider shall apply, prior to the expiration of the period of assisted outpatient treatment ordered by the court, for a second or subsequent order authorizing continued assisted outpatient treatment for a period not to exceed one year from the date of the second or subsequent order. If the court's disposition of the application does not occur prior to the expiration date of the current order, the current order shall remain in effect until the court's disposition. An order for an additional period of treatment shall be obtained pursuant to the provisions of this Ordinance.

(B) A court order requiring periodic blood tests or urinalysis for the presence of alcohol or illegal drugs shall be subject to review after six months by the physician who developed the written treatment plan or another physician designated by the provider, and the physician shall be authorized to terminate such blood tests or urinalysis without further action by the court.

SECTION 10. APPLICATION FOR AN ORDER TO STAY, VACATE OR MODIFY.

In addition to any other right or remedy available by law with respect to the order for assisted outpatient treatment, the patient, the patient's counsel or anyone acting on the patient's behalf may apply to the court to stay, vacate or modify the order. A copy of the application shall be served on the appropriate provider and the original petitioner.

SECTION 11. NONCOMPLIANCE.

(A) A patient may be retained for observation, care, treatment and further examination in the hospital for up to seventy-two hours to permit a physician to determine whether the patient has a mental illness and is in need of continued involuntary retention for care and treatment if a physician determines that:

(1) the patient has failed or has refused to comply with the treatment ordered by the court;

(2) efforts were made to obtain compliance;

(3) the patient may be in need of involuntary admission to a hospital for immediate observation, care and treatment; and

(4) if the patient refuses to take medications or refuses to take or fails a blood test, urinalysis or alcohol or drug test as required by the court order, the physician

may consider such refusal or failure when determining whether the assisted outpatient is in need of an examination to determine whether the patient has a mental illness for which hospitalization is necessary.

(B) Upon a physician's determination that a patient qualifies for observation, care, treatment and further examination, a provider may transport a patient to the hospital operating the assisted outpatient treatment program or to any other hospital authorized to receive such persons.

(C) If deemed necessary and upon the request of a physician, a provider may request the aid of a law enforcement officer to take the patient into custody and accompany the physician in transporting the patient to the hospital operating the assisted outpatient treatment program or to any hospital authorized to receive such persons. A law enforcement officer may carry out a provider's directive pursuant to this section.

(D) Any continued involuntary retention in a hospital beyond the initial seventy-two-hour period shall be in accordance with the provisions of the Mental Health and Developmental Disabilities Code relating to the involuntary admission and retention of a person. If at any time during the seventy-two-hour period the person is determined not to meet the involuntary admission and retention provisions of this section and the person does not agree to stay in the hospital as a voluntary or informal patient, the patient must be released.

(E) A patient's failure to comply with an order of assisted outpatient treatment is, in and of itself, not grounds for involuntary civil commitment. The court may order an evaluation of the Subject to determine whether there is a basis for involuntary commitment under state law.

SECTION 12. PENALTY.

A person who knowingly makes a false statement or knowingly provides false information or false testimony in a petition or hearing pursuant to the provisions of this Ordinance is subject to criminal prosecution. Further, any person who knowingly makes a false statement or knowingly provides false information or false testimony in a petition or hearing shall reimburse the Subject for reasonable attorneys' fees incurred in rebutting or clarifying the falsity.

SECTION 13. SEVERABILITY CLAUSE.

If any section, paragraph, sentence, clause, word or phrase of this ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this ordinance. The Council hereby declares that it would have passed this ordinance and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

SECTION 14. COMPILATION.

This ordinance shall be incorporated in and made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

SECTION 15. EFFECTIVE DATE.

This ordinance shall take effect five days after publication by title and general summary.